

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. CR 17-2901 RB

ESMERALDA DOMINGUEZ,

Defendant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER is before the Court on the United States' Motion for Order Revoking Conditions of Release and Forfeiture of Appearance Bond (*doc. 31*), in which Plaintiff moves the Court for a Judgment of Forfeiture of the \$10,000.00 unsecured bond executed by the defendant, and co-signer/surety Felix Dominguez. The Court, having held two hearings, having heard from all the parties, and now being fully advised in the premises, recommends that the Motion be granted to the extent it remains pending.¹

Defendant Esmeralda Dominguez was charged by Criminal Complaint on July 14, 2017 with conspiring with others to possess with intent to distribute 56.09 grams of methamphetamine, in violation of 21 U.S.C. § 846. The defendant was subsequently arrested and appeared before this Court for a Preliminary/Detention hearing on October 2, 2011. At said hearing, I adopted the Conditions of Release proposed by Pretrial

¹ This Court previously ordered that the Defendant's Conditions of Release be revoked on November 7, 2017 (*doc. 33*), therefore the only issue in question is whether or not the bond should be forfeited.

Services, without objection from the parties. The Defendant was ordered released on certain conditions, which included a \$10,000.00 unsecured bond (to be co-signed by the third party custodian, Felix Dominguez), Pretrial Services supervision, and drug testing and treatment, along with other requirements as set out in the Order Setting Conditions of Release (*doc. 12*) filed on October 3, 2017.

On October 31, 2017, a Petition for Action of Conditions of Release was filed by the U.S. Pretrial Services Office requesting a warrant be issued for the Defendant's arrest as she had tested positive for methamphetamine, and admitted to continued use of the illegal substance. That request was granted in an Order filed the next day, and an arrest warrant was issued.

On November 2, 2017, the Motion for Order Revoking Conditions of Release and Forfeiture of Appearance Bond was filed by Plaintiff. At a hearing on the Motion held on November 15, 2017, Defendant's appointed counsel at the time, Mario Esparza, appeared, but Defendant failed to appear. Mr. Esparza advised he had nothing to offer regarding the Defendant's whereabouts, and also moved the Court to withdraw as counsel as he had discovered a conflict during a review of the discovery. The third party custodian/co-signer, Felix Dominguez, also appeared at the hearing. Mr. Dominguez advised the Court that he urged the Defendant to surrender when he was made aware of the arrest warrant, but the Defendant took off, left her children in his care, and had not been located as of that date.

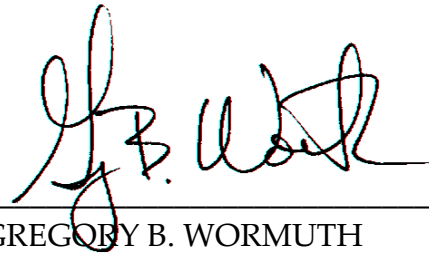
Mr. Dominguez was granted an additional two weeks to locate and apprehend

Defendant before the bond was revoked. Plaintiff did not object to the Court holding the matter in abeyance, and the Court advised the parties that the hearing would be continued until the next available docket, which was November 30th. The Court did grant Mr. Esparza's motion to withdraw as counsel, and ordered that new counsel be appointed upon Defendant's arrest.

On November 27, Defendant was arrested in Deming, NM. (*doc. 42*) She subsequently appeared before U.S. Magistrate Judge Garza for an initial appearance, and new counsel, Pedro Pineda, was appointed. This Court reconvened on November 30, 2017, and Defendant, her counsel, and counsel for the Government were present. Third-party custodian/co-signer Mr. Dominguez was not. Defendant's counsel did not have anything to offer in regards to forfeiture, and therefore did not show cause why the appearance bond should not be forfeited as requested by Plaintiff.

IT IS THEREFORE RECOMMENDED that Judgment be entered against the Defendant, Esmeralda Dominguez, and the third-party custodian/co-signer, Felix Dominguez, in the principal amount of \$10,000.00 plus interest at the legal rate compounded annually and computed daily until paid, and all other costs as allowed by law.

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1)(c). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed no appellate review will be allowed.**

A handwritten signature in black ink, appearing to read 'G.B. Wormuth', is written over a horizontal line.

GREGORY B. WORMUTH
United States Magistrate Judge